IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A. No. 1754 of 1992 (O&M)
Date of Decision : 24.4.2009

Bhupinder Singh (dead through L.Rs.)

..... Appellant

Versus

Sucha Singh & others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. Arun Palli, Sr. Advocate with
Mr. Parminder Singh, Advocate
for the appellant.

Mr. Sarwan Singh, Sr. Advocate with
Mr. N.S. Rapri, Advocate and
Ms. Pooja Chopra, Advocate
for the respondents.

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VINOD K. SHARMA, J. (ORAL)

This regular second appeal is directed against the judgment and decree dated 21.4.1992, passed by the learned Courts below, vide which suit filed by the plaintiff / respondent No.1, for specific performance of agreement to sell dated 8.6.1981, has been ordered to be decreed.

The plaintiff / respondent No.1, brought a suit on the pleadings that the suit property was under the ownership of Provincial Government, and was in possession of defendant No.1, on the basis of quasi permanent allotment. As per the policy of Provincial Government issued by the Rehabilitation Department, defendant No.1 had acquired the right of permanent allotment and transfer of the suit land in his favour, and as such

he applied for transfer / allotment of the suit land in his favour, as absolute owner.

On 8.6.1979, defendant No.1 entered into an agreement to sell the suit land with plaintiff / respondent No.1, for an amount of Rs. 40,000/-, out of which a sum of Rs. 15,000/- was received as earnest money. However, the agreement to sell was reduced into writing on 8.6.1981 at village Appra, Tehsil Phillaur, in which it was stipulated, that the sale deed would be executed after receiving the remaining sale consideration, as and when permanent transfer / allotment in respect of the suit land would be effected, in favour of defendant No.1, by the Provincial Government. It was also stipulated in the agreement to sell, that on the failure of the defendant No.1, to execute the sale deed, plaintiff would be at liberty to get the right of enforcement of agreement to sell through court or be entitled to Rs. 13,000/- as damages. Whereas, in case of default, on the part of the plaintiff, the earnest money would stand forfeited. Defendant No.1 had also undertaken to inform the plaintiff about the transfer of permanent rights in his favour by the Government. It was further the case set up by the plaintiff / respondent No.1, that in the month of April, 1982, there was apprehension in his mind, that defendant No.1 would violate the terms of the agreement, as he had openly declared, that he was to alienate the suit property to any person other than the plaintiff / respondent No.1. He, therefore, contacted defendant No.1, and also got a copy of the jamabandi, in respect of the suit land on 24.4.1982, in order to confirm the factum of transfer of rights, in favour of defendant No.1. However, no entry of permanent transfer of rights was made in his favour, in the revenue record. Plaintiff, accordingly filed a

suit for permanent injunction against defendant No.1 for restraining him to alienate the suit property to any other person, except the plaintiff and obtaining an interim injunction.

On notice having been issued, defendants contested the suit by filing separate written statements, wherein the averments made in the plaint were denied. Defendant No.1 denied having entered into an agreement to sell with plaintiff / respondent No.1. It was claimed that the agreement was forged and fabricated document. He denied having received the earnest money. Stand was also taken that, in case the agreement is proved, then it is plaintiff who refused to perform his part to execute the sale deed, as defendant No.1 was always ready and willing to perform his part of contract. It was also admitted in the written statement, that the suit land was agreed to be sold to defendant No.2 on 2.2.1982. Whereas the other averments in the plaint were denied.

Defendants No.2 & 3 filed a separate written statement, wherein averments made in the plaint were denied. It was claimed that there was no agreement executed between plaintiff and defendant No.1. The agreement set up by plaintiff / respondent No.1 was claimed to be fraudulent document, said to have been prepared in connivance with defendant No.1. The plea of bona fide purchaser for consideration was also taken. The case set up by defendants No.2 & 3 was that the property in dispute was purchased for consideration of Rs. 44,000/- by way of registered sale deed dated 16.7.1982. Agreement dated 2.2.1982, said to have been executed in their favour, was also set up in defence, wherein earnest money of Rs. 20,000/- was said to have been paid to defendant

No.1. The answering defendants further claimed to be in cultivating possession of the suit property, since the date of execution of sale deed in their favour. It was also the case set up by defendants No. 2 & 3 that mutation of sale stood sanctioned in their favour. Defendants No. 2 & 3 further claimed that they were not in knowledge of agreement dated 8.6.1981, at the time of sale deed, or at the time of execution of agreement in their favour. Other preliminary objections were also raised, qua the maintainability of the suit.

In the replication filed by the plaintiff, the averments made in the written statements, were denied and those of the plaint were reasserted.

On the pleadings of the parties, the learned trial Court was pleased to frame the following issues :-

1. *Whether defendant No.1 executed an agreement to sell dated 8.6.1981 in favour of the plaintiff in respect of the suit land, if so, its effect ? OPP*
2. *Whether the plaintiff was always ready and willing to perform his part of the contract ? OPP*
3. *Whether the plaintiff is entitled to any amount as damages by way of alternative relief, if so, to what amount ? OPP*
4. *Whether suit is not maintainable in the present form ? OPD*
5. *Whether plaintiff has no locus standi to file the present suit ? OPD*
6. *Whether suit is bad for misjoinder and nonjoinder of the necessary parties ? OPD*
7. *Whether claim of the plaintiff is time barred ? OPD*
8. *Whether plaintiff is estopped by his own act and*

conduct to file the present suit ? OPD

9. *Whether suit is not properly valued for purpose of court fee and jurisdiction ? OPD*
10. *Whether defendant No.3 is bona fide purchaser without notice and is protected under Section 41 of the Transfer of Property Act ? OPD*
11. *Whether agreement dated 8.6.1981 is the result of fraud and is fictitious document, if so, its effect ? OPD*
12. *Relief."*

On the appreciation of evidence, the learned Courts below have recorded a concurrent finding of fact, holding therein, that the appellant / defendant No.1 had executed an agreement to sell dated 8.6.1981, in favour of plaintiff / respondent No.1, in respect of the suit land. The finding of fact has also been recorded, that plaintiff / respondent No.1 has always been ready and willing and still willing to perform his part of contract. In view of the fact, that the payment of damages and compensation cannot be considered to be adequate relief for enforcement of agreement to sell immovable property, on issue No.3, it was held that the plaintiff was entitled to specific enforcement of the contract and the alternative relief would not be adequate.

On issue No.4, the learned Courts below have recorded a finding that the suit as framed, by the plaintiff was maintainable.

Issues No. 4 to 9 were decided against the defendants as not pressed.

On Issue No.10, the learned Courts below have recorded a concurrent finding of fact, that the sale deed having been executed, in

favour of the defendant / appellants, after filing of suit, they could not be said to be bona fide purchaser, for consideration, as their rights were hit by Section 52 of the Transfer of Property Act, The issue No.10 was also decided against the appellant / defendants.

For want of evidence, with regard to the fraud and misrepresentation, issue No.11 was also decided against the defendants, and it was held, that the agreement dated 8.6.1981 was not result of fraud or misrepresentation, nor it could be said to be a fictitious document. Consequently, the suit was decreed.

It is pertinent to mention here that issues No. 1, 2 & 3 were directed to be decided again on remand by the learned lower appellate Court, on an appeal filed by the appellant / defendants, who were proceeded ex parte.

The learned counsel appearing on behalf of the appellant contends that the appeal raises the following substantial questions of law for consideration :-

1. Whether the learned Courts below have committed an error in rejecting the plea of bona fide purchaser for consideration by misreading the evidence on record ?
2. Whether the judgment and decree passed by the learned Courts below ordering specific performance of agreement to sell is outcome of misreading of evidence, thus, perverse ?

In support of the substantial questions of law, the learned

counsel for the appellants vehemently contended that sufficient evidence was led to show that the defendant / appellants had no knowledge of sale dated 8.6.1981, and had entered into agreement for purchase on 2.2.1981, and thereafter the sale deed was executed in their favour on 16.7.1982. The learned Courts below have, thus, erred in law in deciding the issue of bona fide purchaser against the defendant / appellants.

It is further the contention of the learned counsel for the appellants that the judgment and decree passed by the learned Courts below, is outcome of misreading of evidence, thus, perverse as the Courts below have failed to notice, that a specific stand was taken by defendant No.1, that he had not entered into an agreement with plaintiff / respondent No.1. It was also pleaded that the agreement was forged and fabricated document, if the evidence led by the defendant / appellants is considered, in view of the stand taken qua agreement then it can not be said, that they had any knowledge of agreement with the plaintiff / respondent No.1. The appellants were bona fide purchaser for consideration as there was no evidence which could lead to conclusion that appellant knew about the agreement executed with plaintiff / respondent.

On consideration of the matter, I find no force in the contentions raised by the learned counsel for the appellants. The defendant / appellants could not be said to be bona fide purchaser, for consideration, as admittedly they got the sale deed executed in their favour after filing of the suit.

The learned Courts below, therefore, were justified in applying Section 52 of the Transfer of Property Act to hold that the transaction in

favour of defendant / appellants was hit by principle of lis pendens. Even otherwise once the suit filed by the plaintiff / respondent was prior to the execution of the sale deed in favour of appellant / defendant, it was for them to verify as to whether there was any clog on the title or whether there was any suit pending between the parties. Having failed to take care in this regard it could not be said that they were bona fide purchaser. As already observed above, the sale deed in their favour was rightly held to be hit by the principle of lis pendens. The findings have been recorded on appreciation of evidence. It can not be said that the plea of bona fide purchaser has been wrongly rejected by misreading the evidence, nor the judgment and decree passed by the learned Courts below can be said to be outcome of misreading of evidence or perverse.

The substantial questions of law, raised above, by the learned counsel for the appellants are answered against the appellants.

Consequently, this regular second appeal is dismissed but with no order as to costs.

24.4.2009 **(VINOD K. SHARMA)**
'sp' **JUDGE**